
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2146

Session of
1993

INTRODUCED BY GEORGE, REBER, SURRA, JAROLIN, FEE, LAUGHLIN,
VEON, MIHALICH, CAPPABIANCA, YEWCIC, SATHER, PETRARCA,
HALUSKA, STISH, D. W. SNYDER, PESCI, KING, HANNA,
S. H. SMITH, STAIRS, STERN, COLAIZZO, WOZNIAK, COY, ROONEY
AND WILLIAMS, OCTOBER 7, 1993

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 20, 1994

AN ACT

1 Amending the act of January 24, 1966 (1965 P.L.1535, No.537),
2 entitled, as amended, "An act providing for the planning and
3 regulation of community sewage systems and individual sewage
4 systems; requiring municipalities to submit plans for systems
5 in their jurisdiction; authorizing grants; requiring permits
6 for persons installing such systems; requiring disclosure
7 statements in certain land sale contracts; authorizing the
8 Department of Environmental Resources to adopt and administer
9 rules, regulations, standards and procedures; creating an
10 advisory committee; providing remedies and prescribing
11 penalties," adding and amending certain definitions; further
12 providing for official plans, for grants and reimbursements,
13 for permits and for land sale contracts; providing for soil
14 mottling and for individual residential spray irrigation
15 systems; further providing for the powers and duties of local
16 agencies and the Department of Environmental Resources, for
17 penalties and enforcement, for the disposition of fines,
18 civil penalties and fees and for nuisances; and providing for
19 civil actions.

20 The General Assembly of the Commonwealth of Pennsylvania
21 hereby enacts as follows:

22 Section 1. Section 2 of the act of January 24, 1966 (1965
23 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities
24 Act, amended July 22, 1974 (P.L.621, No.208) and July 1, 1989

1 (P.L.124, No.26), is amended to read:

2 Section 2. Definitions.--As used in this act:

3 "Advisory committee" means the special committee created by
4 the provisions of the act.

5 "Alternate sewage system" means a method of demonstrated on-
6 lot sewage treatment and disposal not described in the
7 regulations.

8 "Certification board" means the administrative board within
9 the department created by section 11 of this act.

10 "Community sewage system" means any system, whether publicly
11 or privately owned, for the collection of sewage or industrial
12 wastes of a liquid nature from two or more lots, and the
13 treatment and/or disposal of the sewage or industrial waste on
14 one or more of the lots or at any other site.

15 "Conventional sewage system" means a system employing the use
16 of demonstrated on-lot sewage treatment and disposal technology
17 in a manner specifically recognized by the regulations
18 promulgated under this act. The term does not include alternate
19 sewage systems or experimental sewage systems.

20 "Delegated agency" means a municipality, local agency,
21 multimunicipal local agency or county or joint county department
22 of health to which the Department of Environmental Resources has
23 delegated the authority to review and approve subdivisions for
24 new land developments as supplements to the official plan of a
25 municipality in which the subdivision is located.

26 "Department" means the Department of Environmental Resources
27 of the Commonwealth of Pennsylvania.

28 "Environmental Hearing Board" means the board established
29 pursuant to section 1921-A of The Administrative Code of 1929
30 for the purposes set forth in that section.

1 "Environmental Quality Board" means the board established
2 pursuant to section 1920-A of The Administrative Code of 1929
3 for the purposes set forth in that section.

4 "Experimental sewage system" means a method of on-lot sewage
5 treatment and disposal not described in the regulations
6 promulgated under this act which is proposed for the purpose of
7 testing and observation.

8 "Individual residential spray irrigation system" means an
9 individual sewage system permitted under section 7 of this act
10 which serves a single dwelling and which treats and disposes of
11 sewage using a system of piping, treatment tanks and soil
12 renovation through spray irrigation.

13 "Individual sewage system" means a system of piping, tanks or
14 other facilities serving a single lot and collecting and
15 disposing of sewage in whole or in part into the soil or into
16 any waters of this Commonwealth or by means of conveyance to
17 another site for final disposal[; an alternate individual sewage
18 system shall mean any individual sewage system not heretofore
19 recognized by rules, regulations and standards of the
20 department].

21 "Local agency" means a municipality, or any combination
22 thereof acting cooperatively or jointly under the laws of the
23 Commonwealth, county, county department of health or joint
24 county department of health.

25 "Lot" means a part of a subdivision or a parcel of land used
26 as a building site or intended to be used for building purposes,
27 whether immediate or future, which would not be further
28 subdivided. Whenever a lot is used for a multiple family
29 dwelling or for commercial or industrial purposes, the lot shall
30 be deemed to have been subdivided into an equivalent number of

1 single family residential lots as determined by estimated sewage
2 flows.

3 "Municipality" means a city, town, township, [or] borough or
4 home rule municipality other than a county.

5 "Official plan" means a comprehensive plan for the provision
6 of adequate sewage systems adopted by a municipality or
7 municipalities possessing authority or jurisdiction over the
8 provision of such systems and submitted to and approved by the
9 State Department of Environmental Resources as provided herein.

10 "Official plan revision" means a change in the municipality's
11 official plan to provide for additional or newly identified or
12 future sewage facilities needs, which may include, but not be
13 limited to, any of the following:

14 (1) Update revision.--A comprehensive revision to an
15 existing official plan required when the Department of
16 Environmental Resources or municipality determines an official
17 plan or any of its parts is inadequate for the existing or
18 future sewage facilities needs of a municipality or its
19 residents or landowners.

20 (2) Revision for new land development.--A revision to a
21 municipality's official plan resulting from a proposed
22 subdivision.

23 (3) Special study.--A study, survey, investigation, inquiry,
24 research report or analysis which is directly related to an
25 update revision. Such study shall provide documentation or other
26 support necessary to solve specific problems identified in the
27 update revision.

28 (4) Supplement.--A sewage facilities planning module for a
29 subdivision for new land development which will not be served by
30 sewage facilities requiring a new or modified permit from the

1 Department of Environmental Resources under the act of June 22,
2 1937 (P.L.1987, No.394), known as "The Clean Streams Law," and
3 which is reviewed and approved by a delegated agency under
4 section 7(f)(4.3)(iv) of this act.

5 (5) Exception to the requirement to revise.--A process
6 established by regulation promulgated under this act which
7 provides the criteria under which a revision for new land
8 development is not required.

9 "Person" shall include any individual, association, public or
10 private corporation for profit or not for profit, partnership,
11 firm, trust, estate, department, board, bureau or agency of the
12 Commonwealth, political subdivision, municipality, district,
13 authority, or any other legal entity whatsoever which is
14 recognized by law as the subject of rights and duties. Whenever
15 used in any clause prescribing and imposing a penalty or
16 imposing a fine or imprisonment, the term "person" shall include
17 the members of an association, partnership or firm and the
18 officers of any local agency or municipal, public or private
19 corporation for profit or not for profit.

20 ~~"Qualified geologist" means a person licensed to practice~~ <—
21 ~~geology in this Commonwealth who has experience in the~~
22 ~~characterization, classification, mapping and interpretation of~~
23 ~~soils as they relate to the function of on lot sewage disposal~~
24 ~~systems.~~

25 "Qualified registered professional engineer" means a person
26 registered to practice engineering in this Commonwealth who has
27 experience in the characterization, classification, mapping and
28 interpretation of soils as they relate to the function of on-lot
29 sewage disposal systems.

30 "QUALIFIED REGISTERED PROFESSIONAL GEOLOGIST" MEANS A PERSON <—

1 REGISTERED TO PRACTICE GEOLOGY IN THIS COMMONWEALTH WHO HAS
2 EXPERIENCE IN THE CHARACTERIZATION, CLASSIFICATION, MAPPING AND
3 INTERPRETATION OF SOILS AS THEY RELATE TO THE FUNCTION OF ON-LOT
4 SEWAGE DISPOSAL SYSTEMS.

5 "Qualified soil scientist" means a person certified as a
6 sewage enforcement officer and who has documented two years'
7 experience in the characterization, classification, mapping and
8 interpretation of soils as they relate to the function of on-lot
9 sewage disposal systems and either a bachelor of science degree
10 in soils science from an accredited college or university or
11 certification by the American Registry of Certified
12 Professionals in Agronomy, Crops and Soils.

13 "Residential subdivision plan" means a subdivision in which
14 at least two-thirds of the proposed daily sewage flows will be
15 generated by residential uses.

16 ["Rural residence" means a structure occupied or intended to
17 be occupied by not more than two families on a tract of land of
18 ten acres or more.]

19 "Secretary" means the Secretary of Environmental Resources of
20 the Commonwealth of Pennsylvania.

21 "Sewage" means any substance that contains any of the waste
22 products or excrement or other discharge from the bodies of
23 human beings or animals and any noxious or deleterious
24 substances being harmful or inimical to the public health, or to
25 animal or aquatic life, or to the use of water for domestic
26 water supply or for recreation, or which constitutes pollution
27 under the act of June 22, 1937 (P.L.1987, No.394), known as "The
28 Clean Streams Law," as amended.

29 "Sewage enforcement officer" means the official of the local
30 agency who issues and reviews permit applications and conducts

1 such investigations and inspections as are necessary to
2 implement the act and the rules and regulations thereunder.

3 "Soil mottling" means a soil color pattern consisting of
4 patches of different color or shades of color interspersed with
5 the dominant soil color which results from prolonged saturation
6 of the soil.

7 "Subdivision" means the division or redivision of a lot,
8 tract or other parcel of land into two or more lots, tracts,
9 parcels or other divisions of land including changes in existing
10 lot lines. The enumerating of lots shall include as a lot that
11 portion of the original tract or tracts remaining after other
12 lots have been subdivided therefrom.

13 Section 2. Section 5 of the act, amended July 22, 1974
14 (P.L.621, No.208) and July 1, 1989 (P.L.124, No.26), is amended
15 to read:

16 Section 5. Official Plans.--(a) Each municipality shall
17 submit to the department an officially adopted plan for sewage
18 services for areas within its jurisdiction within such
19 reasonable period as the department may prescribe, and shall
20 from time to time submit revisions of such plan as may be
21 required by rules and regulations adopted hereunder or by order
22 of the department: Provided, however, That a municipality may at
23 any time initiate and submit to the department revisions of the
24 said plan. Revisions shall conform to the requirements of
25 subsection (d) of this section and the rules and regulations of
26 the department.

27 [(b) Any person who is a resident or property owner in a
28 municipality may request the department to order the
29 municipality to revise its official plan where said person can
30 show that the official plan is inadequate to meet the resident's

1 or property owner's sewage disposal needs. Such request may only
2 be made after a prior demand upon and refusal by the
3 municipality to so revise its official plan. The request to the
4 department shall contain a description of the area of the
5 municipality in question and an enumeration of all reasons
6 advanced by said person to show the official plan's inadequacy.
7 Such person shall give notice to the municipality of the request
8 to the department.]

9 (a.1) The municipality shall review and act upon revisions
10 for new land development and exceptions to the requirement to
11 revise an official plan, within sixty days of receipt of a
12 complete application or such additional time as the applicant
13 and municipality may agree to in writing. Failure of the
14 municipality to act within the sixty-day period or any agreed-to
15 time extension shall cause the revision for new land development
16 or exception to the requirement to revise to be deemed approved
17 by the municipality and the complete application shall be
18 submitted to the department by the municipality or applicant.

19 (b) Any person who is a resident or legal or equitable
20 property owner in a municipality may file a private request with
21 the department requesting that the department order the
22 municipality to revise its official plan if the resident or
23 property owner can show that the official plan is not being
24 implemented or is inadequate to meet the resident's or property
25 owner's sewage disposal needs. This request may be made only
26 after a prior written demand upon and written refusal by the
27 municipality to so implement or revise its official plan or
28 failure of the municipality to reply in either the affirmative
29 or negative within sixty days or failure of the municipality to
30 implement its official plan within the time limits established

in the plan's implementation schedule or failure to revise its official plan within the time limits established by regulation. No private request to revise an official plan because of the subdivision of land will be considered by the department unless the proposed land use is consistent with all applicable zoning ordinances. The request to the department shall contain a description of the area of the municipality in question and a list of all reasons why the plan is believed to be inadequate. Such person shall give notice to the municipality of the request to the department.

(b.1) Upon receipt of a private request for revision, the department shall notify the municipality and appropriate planning agencies within the municipality, including a planning agency with areawide jurisdiction, if one exists under the act of July 31, 1968 (P.L.805, No.247), known as the "Pennsylvania Municipalities Planning Code," and the existing county or joint county department of health of receipt of the private request and inform them that written comments may be submitted to the department no later than forty-five days after the department's receipt of the private request for revision. The comments shall include a discussion of the consistency of the proposed subdivision with any applicable zoning ordinances. In arriving at its decision, the department shall consider:

(1) The reasons advanced by the requesting person.

(2) The reasons for denial advanced by the municipality.

(3) The comments of the planning agencies and county or joint county departments of health.

(4) Whether the proposed sewage facilities and documentation supporting the proposed sewage facilities is consistent with the department's rules and regulations.

1 (5) The municipality's official plan.

2 (b.2) The department shall render a decision and inform the
3 person requesting the revision and the appropriate municipality
4 in writing within one hundred twenty days after either receipt
5 of the comments permitted by this section or the expiration of
6 the forty-five day comment period when no comments have been
7 received or within an extended period if agreed to in writing by
8 the person making the request. The department's decision shall
9 specify the nature of the revision to the municipality's
10 official plan that the municipality will be required to
11 implement or the reasons for refusal. If the department orders a
12 requested revision, the order shall specify time limits for plan
13 completion, including interim deadlines and compliance schedules
14 the department deems necessary. If the department refuses to
15 order a requested revision, it shall notify the person making
16 the request in writing of the reasons for the refusal. In the
17 event the department fails to act within the specified time
18 limits and the applicant takes a mandamus action against the
19 department, the court may award costs for counsel and court
20 costs to the prevailing party.

21 (c) The required plan or any revision thereof may be
22 submitted jointly by two or more municipalities.

23 (d) Every official plan shall:

24 (1) Delineate areas in which community sewage systems are
25 now in existence, areas experiencing problems with sewage
26 disposal including a description of said problems, areas where
27 community sewage systems are planned to be available within a
28 ten year period, areas where community sewage systems are not
29 planned to be available within a ten year period and all
30 subdivisions existing or approved.

1 (2) Provide for the orderly extension of community
2 interceptor sewers in a manner consistent with the comprehensive
3 plans and needs of the whole area, provided that this section
4 shall not be construed to limit the development of such
5 community facilities at an accelerated rate different than that
6 set forth in the official plan;

7 (3) Provide for adequate sewage treatment facilities which
8 will prevent the discharge of untreated or inadequately treated
9 sewage or other waste into any waters or otherwise provide for
10 the safe and sanitary treatment of sewage or other waste;

11 (4) Take into consideration all aspects of planning, zoning,
12 population estimates, engineering and economics so as to
13 delineate with all practicable precision those portions of the
14 area which community systems may reasonably be expected to serve
15 within ten years, after ten years, and any areas in which the
16 provision of such services is not reasonably foreseeable;

17 (5) Take into consideration any existing State plan
18 affecting the development, use and protection of water and other
19 natural resources;

20 (6) Establish procedures for delineating and acquiring, on a
21 time schedule consistent with that established in clause (4) of
22 this subsection, necessary rights-of-way or easements for
23 community sewage systems;

24 (7) Set forth a time schedule and proposed methods of
25 financing the construction and operation of the planned
26 community sewage systems, together with the estimated cost
27 thereof;

28 (8) Be reviewed by appropriate official planning agencies
29 within a municipality, including a planning agency with areawide
30 jurisdiction if one exists, in accordance with the [act of July

31, 1968 (P.L.805, No.247), known as the] "Pennsylvania
Municipalities Planning Code," as amended, for consistency with
programs of planning for the area, and all such reviews shall be
transmitted to the department with the proposed plans; and

(9) Designate municipal responsibility for implementation of
the plan.

(e) (1) The department is hereby authorized to approve or
disapprove official plans, special studies and update revisions
to official plans for sewage systems submitted in accordance
with this act within one year of date of submission [and].

(2) The department is authorized to approve or disapprove
revisions of official plans within such [lesser] time as the
regulations shall stipulate, except that the department shall
approve or disapprove revisions constituting residential
subdivision plans within [ninety days of the date of a complete
submission, for the period of one year from the effective date
of this amendatory act, and within] sixty days of the date of a
complete submission [thereafter]. The department may act on
requests for exceptions to the requirement to revise official
plans within thirty days of receipt of such documentation as may
be required by regulation. If the department fails to act within
such thirty-day period, it shall be deemed that the exception to
the requirement to revise the official plan shall be applicable.
The department shall determine if a submission is complete
within ten working days of its receipt.

(3) Delegated agencies shall approve or disapprove
supplements within sixty days of the date of a complete
submission or such additional time as the applicant and
delegated agency may agree to in writing. The delegated agency
shall determine if a submission is complete within ten days of

1 its receipt.

2 (f) The department is authorized to provide technical
3 assistance to counties, municipalities and authorities in
4 coordinating official plans for sewage systems required by this
5 act, including revisions of such plans.

6 (g) For purposes of this act, the department is authorized
7 to cooperate with appropriate private organizations.

8 (h) The department shall maintain and make available for
9 public inspection a record of all official plans, update
10 revisions and special studies submitted for department review,
11 indicating the date received, type of submission and date of
12 disposition.

13 (i) Any publication of proposed adoption of or revision to
14 an official plan or notice of application for a permit for
15 department approval required by this act or the regulations
16 promulgated under this act may be provided by the applicant or
17 the applicant's agent, municipality or the local agency by
18 publication in a newspaper of general circulation as required by
19 department regulation. Where an applicant or applicant's agent
20 provides the required publication, the municipality and local
21 agency shall be relieved of the obligation to publish.

22 Section 3. Section 6 of the act, amended July 22, 1974
23 (P.L.621, No.208), is amended to read:

24 Section 6. Grants and Reimbursements Authorized.--(a) The
25 department is authorized to administer grants to counties,
26 municipalities and authorities to assist them in preparing
27 official plans and revisions to official plans for sewage
28 systems required by this act, and for carrying out related
29 studies, surveys, investigations, inquiries, research and
30 analyses. Such grants shall be made from funds appropriated by

1 the General Assembly for this purpose and shall equal one-half
2 the cost of preparing such plans. Such grants shall not be
3 withheld from any municipality which is complying with the terms
4 of this act. For the purposes of this section, costs shall be
5 exclusive of those reimbursed or paid by grants from the Federal
6 Government.

7 (b) [Local] Except as provided in subsection (c), local
8 agencies complying with the provisions of this act in a manner
9 deemed satisfactory by the secretary shall be reimbursed
10 annually by the department from funds specifically appropriated
11 for such purpose equal to one-half of the cost of the expenses
12 incurred by the local agency in enforcement of the provisions of
13 this act. Such grants shall not be withheld from any local
14 agency which is complying with the terms of this act. For the
15 purposes of this section, costs shall be exclusive of those
16 reimbursed or paid by grants from the Federal Government.

17 (c) A local agency complying with the provisions of this act
18 in a manner deemed satisfactory by the department shall be
19 reimbursed up to eighty-five percent of the cost of the expenses
20 incurred in the administration and enforcement of this act from
21 funds specifically appropriated by the General Assembly for this
22 purpose if the local agency submits documentation which supports
23 that it qualifies for such increased reimbursement. To qualify
24 for up to eighty-five percent reimbursement, a local agency
25 must:

26 (1) Document the acceptance, delegation or transfer of the
27 administration of sections 7, 8, 12, 13, 13.1, 14, 15 and 16 of
28 this act from one or more municipalities.

29 (2) Employ or contract with at least one sewage enforcement
30 officer actively engaged in activities related to the

1 administration of this act at least one thousand two hundred
2 hours per year, including leave and holidays.

3 (3) Employ or contract with adequate administrative support
4 staff.

5 (4) Employ or contract with one alternate sewage enforcement
6 officer.

7 (5) Employ or contract with a qualified soil scientist.

8 (6) Submit to the department for review and comment
9 administrative procedures, permit procedures, ordinances of the
10 member municipalities related to the administration of this act,
11 rules, regulations, permit-related fee schedules and contracted
12 services proposed for use in the local agency.

13 (7) Employ, or have a contractual arrangement with,
14 sufficient technical staff to provide for local agency response
15 to signed written requests for service within the time frames
16 established by the administrative procedures and regulations of
17 the local agency.

18 Section 4. Section 7 of the act, amended July 22, 1974
19 (P.L.621, No.208), October 4, 1978 (P.L.1003, No.212) and July
20 1, 1989 (P.L.124, No.26), is amended to read:

21 Section 7. Permits.--(a) (1) No person shall install,
22 construct, or [request bid proposals] award a contract for
23 construction, or alter, repair or connect to an individual
24 sewage system or community sewage system or construct, or
25 request bid proposals for construction, or install or occupy any
26 building or structure for which an individual sewage system or
27 community sewage system is to be installed without first
28 obtaining a permit indicating that the site and the plans and
29 specifications of such system are in compliance with the
30 provisions of this act and the standards adopted pursuant to

1 this act. A permit shall not be required by a person where a new
2 dwelling is proposed to replace a previously existing dwelling
3 where the size and anticipated use of the new dwelling is the
4 same as the previously existing dwelling and the previously
5 existing dwelling was in use within one year of the anticipated
6 date of the completion of construction. This exception shall not
7 apply when an active investigation of malfunction is under way
8 by the local agency or the department. No permit may be issued
9 by the local agency in those cases where a permit from the
10 department is required pursuant to the act of June 22, 1937
11 (P.L.1987, No.394), known as "The Clean Streams Law," as
12 amended, or where the department pursuant to its rules and
13 regulations, determines that such permit is not necessary
14 [either for a rural residence or] for the protection of the
15 public health. Except where a local agency or municipality
16 requires a permit by ordinance, no permit or plan revision shall
17 be required for the installation of an individual on-lot sewage
18 system for a residential structure occupied or intended to be
19 occupied by [not more than two families, one of whom is the
20 property owner,] the property owner or a member of his immediate
21 family on a contiguous tract of land ten acres or more if the
22 owner of the property was the owner of record as of January 10,
23 1987.

24 (2) The installation of such a permit-exempt system shall
25 not be required to be approved by or meet the standards of the
26 department or local agency pursuant to their rules and
27 regulations for the siting, design or installation of on-lot
28 sewage systems, except for the siting requirements of subsection
29 (a.1), unless a permit is required by a regulation or ordinance
30 of a local agency or municipality, or the person qualifying for

1 the permit exemption chooses to not use the permit exemption. A
2 permit exemption may also be granted where a ten-acre parcel or
3 lot is subdivided from a parent tract after January 10, 1987.
4 When one permit exemption has been granted for a lot, tract or
5 parcel under this section, any lot, tract or parcel remaining
6 after subdivision of the lot or parcel which received the permit
7 exemption or any lots or parcels subdivided therefrom in the
8 future shall not be eligible for a ten-acre permit exemption and
9 must meet the planning, permitting, siting and construction
10 standards of the department for on-lot sewage systems. Persons
11 otherwise qualified for a permit exemption who do not choose to
12 use the permit exemption remain exempt from the planning
13 requirements of this act.

14 (3) For the purposes of this section, the term "immediate
15 family" shall mean brother, sister, son, daughter, stepson,
16 stepdaughter, grandson, granddaughter, father or mother of the
17 property owner.

18 (a.1) Owners of property qualifying for a permit exemption
19 under this section shall install permit-exempt systems in
20 accordance with the following siting requirements:

21 (1) The perimeter of the septic tanks and absorption area
22 shall be located at least two hundred feet from the perimeter of
23 any property line, nonutility right-of-way, one hundred-year
24 flood plain or any river, stream, creek, impoundment, well,
25 watercourse, storm sewer, lake, dammed water, pond, spring,
26 ditch, wetland, water supply or any other body of surface water
27 and ten feet from any utility right-of-way.

28 (2) Before a person who meets the requirements for a permit-
29 exempt system installs the system, such person shall notify the
30 local agency of the installation. The local agency may charge a

1 fee, not to exceed twenty-five dollars (\$25), to verify the
2 system is located in accordance with the siting requirements of
3 subsection (a.1)(1).

4 (a.2) A local agency shall require a person installing a
5 permit-exempt system to indemnify and hold harmless the
6 Commonwealth, the local agency, the sewage enforcement officer
7 serving the municipality in which the system is located and the
8 municipality where the system is located from and against
9 damages to property or injuries to any persons and other losses,
10 damages, expenses, claims, demands, suits and actions by any
11 party against the Commonwealth, the local agency, sewage
12 enforcement officer and the municipality in connection with the
13 malfunctioning of the on-lot sewage system installed under the
14 permit exemption provisions of this section. It is the sole
15 responsibility of the property owner who installed or contracted
16 for the installation of a sewage system under the permit
17 exemption provisions of this section or the property owner who
18 accepted responsibility for the system upon purchase of the
19 property under the disclosure provisions of section 7.1(b) of
20 this act to correct or have corrected any system malfunction
21 which contaminates surface or groundwater or discharges to the
22 surface of the ground. Malfunctions of systems installed under
23 the provisions of this section which contaminate ground or
24 surface water or discharge to the surface of the ground shall
25 constitute a nuisance and shall be abatable in a manner provided
26 by law.

27 (b) (1) Application for permit shall be in writing to the
28 local agency in accordance with the provisions of section 8 of
29 this act, and shall be made in such form and shall include such
30 data as the department may prescribe.

1 [(2) Permits shall be issued or denied within seven days
2 after receiving an application for permit except that, in case
3 the local agency in accordance with the provisions of section 8
4 of this act, finds the data submitted by an applicant is
5 incomplete, or the local agency is unable to verify the
6 information submitted, the local agency shall so notify the
7 applicant within seven days after receiving said application and
8 the time for acting thereon shall be extended fifteen days
9 beyond the date of receipt of adequate supplementary or
10 amendatory data. Denial of permit shall be supported by a
11 statement in writing of the reasons for such action.] The local
12 agency shall maintain and make available for public inspection a
13 record of all permit applications submitted, indicating the date
14 received, type of submission and date of disposition.

15 (2) Permits for on-lot sewage disposal systems shall be
16 issued or denied within the time limits prescribed in this
17 section. Denial of any permit shall be supported by a statement
18 in writing of the reasons for such action.

19 (2.1) Permits for conventional systems shall be issued or
20 denied within seven days of receipt of a complete initial
21 application. If the initial application is found to be
22 incomplete, the time for acting thereon shall be extended
23 fifteen days beyond the date of receipt of adequate
24 supplementary or amendatory data.

25 (2.2) In municipalities or local agencies which are not
26 delegated agencies, permits for alternate systems shall be
27 reviewed for completeness, and, if found to be incomplete, the
28 nature of the deficiency shall be communicated to the applicant
29 in writing within fifteen days.

30 (i) Applications for alternate system permits found to be

complete shall be submitted within five days of the
determination of completeness to the department by the local
agency or authorized representative for appropriate action.

(ii) Permits for alternate systems shall be issued or denied
by the local agency within forty-five days of transmittal of a
complete application to the department.

(2.3) In municipalities or local agencies which are
delegated agencies, permit applications for alternate systems
shall be reviewed for completeness, and, if found to be
incomplete, the nature of the deficiency shall be communicated
to the applicant in writing within fifteen days. Permits for
alternate systems shall be issued or denied by the local agency
within thirty days of receipt of a complete application.

(2.4) In those cases where a local agency has issued a
permit under this section and the department disagrees with the
basis for the issuance of the permit, the department shall not
require the revocation of that permit unless the department has
provided to the local agency justification for its decision
based on the specific provisions of statute or regulation.

(3) No system or structure designed to provide individual or
community sewage disposal shall be covered from view until
approval to cover the same has been given by the body which
issued the original permit or its authorized representative. If
seventy-two hours have elapsed, excepting Sundays and holidays,
since the body issuing the permit [receive] received
notification of completion of construction, the applicant may
cover said system or structure unless permission has been
refused by the issuing body.

[(4) The local agency shall not issue permits for individual
sewage systems or community sewage systems unless the system

1 proposed is consistent with the official plan of the
2 municipality in which said system is to be located and the
3 municipality is adequately implementing the official plan. In
4 the event that the municipality has no plan or has not revised
5 or implemented its plan as required by the rules and regulations
6 of the department or by order of the department, no permits may
7 be issued under this section 7 of this act in those areas of the
8 municipality for which an official plan, revision thereto or
9 implementation thereof is required, until the municipality has
10 submitted the said official plan or revision to, and received
11 the approval of, the department, or has commenced implementation
12 of its plan or revisions in accordance with a schedule approved
13 by the department.]

14 (4) The local agency shall not issue permits for individual
15 sewage systems or community sewage systems unless the system
16 proposed is consistent with the official plan, a special study
17 or an update revision to the official plan of the municipality
18 in which said system is to be located and the municipality is
19 adequately implementing the official plan, special study or
20 update revision in those areas of the municipality covered by
21 such plan, study or revision.

22 (4.1) In the event that the municipality has no plan or has
23 not received department approval of an update revision or
24 special study to the official plan or implemented its plan as
25 required by the rules and regulations of the department or by
26 order of the department, no permits may be issued under this
27 section in only those areas of the municipality in which the
28 department finds that there is a serious risk to the health,
29 safety and welfare of persons within or adjacent to the
30 municipality by reason of the municipality's failure to revise

1 or implement its plan until the municipality has submitted the
2 said official plan, update revision or special study to the
3 official plan to, and received the approval of, the department,
4 or has commenced implementation of its plan, update revision or
5 special study in accordance with a schedule approved by the
6 department.

7 (i) A supplement or a revision for new land development or
8 interim repairs to or the replacement of existing malfunctioning
9 on-lot sewage systems shall not be denied solely on the basis of
10 the failure of the municipality in which the new land
11 development or system in need of repair or replacement is
12 proposed to submit an update revision or special study or
13 implement its plan as required by an order of the department or
14 the rules and regulations of the department or because the
15 update revision or special study is under review by the
16 department.

17 (ii) Every contract for the sale of a lot, as defined in
18 section 2, which is within an area in which permit limitations
19 are in effect and which is subject to permit limitations under
20 this section shall contain a statement in the contract that
21 clearly indicates to the buyer that sewage facilities are not
22 available for that lot and that sewage facilities will not be
23 available and construction of any structure on the lot may not
24 begin until the department has approved a major planning
25 requirement, including, but not limited to, a plan update
26 revision or special study. Any contract for the sale of a lot
27 which does not conform to the requirements of this section shall
28 not be enforceable by the seller against the buyer. Any term of
29 such contract purporting to waive the rights of the buyer to the
30 disclosures required in this section shall be void.

1 (4.2) The limitations on permit issuance contained in
2 paragraph (4.1) shall not apply:

3 (i) to those sections of the municipality where the
4 department finds that a replacement system could be installed on
5 the lot in the event that the original system failed;

6 (ii) to those areas of the municipality outside of the areas
7 delineated in an order of the department as requiring an update
8 revision. The filing of an appeal to a department order issued
9 under this subsection shall not operate as an automatic
10 supersedeas of the action of the department;

11 (iii) to existing subdivisions or sections thereof where the
12 department or delegated agency finds that either lots or homes
13 in the subdivision or sections thereof have been sold in good
14 faith to a purchaser for value prior to May 15, 1972, and not
15 for the purpose of avoiding the permit limitation provisions of
16 paragraph (4.1). This clause shall not relieve the municipality
17 of its planning responsibilities as specified in this act; or

18 (iv) where the department finds it necessary to issue
19 permits for the abatement of pollution and/or the correction of
20 health hazards.

21 (4.3) The department may, by agreement, delegate to a local
22 agency or county or joint county department of health which has
23 been qualified by the department for receipt of eighty-five
24 percent reimbursement under section 6(c) of this act, the power
25 and duty to require the submittal of and review and approve or
26 disapprove sewage facilities planning for new land development
27 proposing the use of on-lot sewage systems using planning module
28 forms provided by the department. Additionally, the following
29 shall apply:

30 (i) Sewage facilities planning approved by a delegated

agency under this subsection shall not constitute a revision or exception to the requirement to revise under this act and the rules and regulations promulgated hereunder but shall be a supplement to the official sewage facilities plan.

(ii) Delegated agencies may assess fees for the review of supplements under this section. Fees received pursuant to this section shall be used solely for the purpose of administering the delegated powers and duties related to the new land development planning provisions of this act and the rules and regulations promulgated hereunder.

(iii) The department may limit the review of supplements in the delegation agreements to specific classifications of sewage facilities or new land developments.

(iv) Delegation of the review and approval of supplements for new land development may be granted by the department where the local agency or county or joint county department of health has adequately documented the following to the department:

(A) The municipalities or counties to be included in the delegation agreement have municipal or countywide subdivision and land development ordinances in effect under the act of July 31, 1968 (P.L.805, No.247), known as the "Pennsylvania Municipalities Planning Code."

(B) The municipalities to be included in the delegation agreement have a current official sewage facilities plan which is being implemented in accordance with the content of the plan's implementation schedule and the provisions of this act, the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," and regulations promulgated hereunder.

(C) The municipalities or counties to be included in the delegation agreement have municipal or countywide subdivision

1 and land development ordinances in effect which require sewage
2 facilities planning approval as a condition attached to final
3 plat approval under the "Pennsylvania Municipalities Planning
4 Code."

5 (D) Where delegation is requested for the review of new land
6 developments proposing the use of public sewerage facilities not
7 requiring a new or modified permit under "The Clean Streams
8 Law," the delegation agreement must include coordination
9 procedures to be used with the department to assure continued
10 compliance with the municipal wasteload management provisions of
11 "The Clean Streams Law."

12 (E) The local agency and any sewage enforcement officer
13 employed by the local agency serving the municipalities to be
14 included in the delegation agreement have not been issued a
15 notice of violation or order by the department for any
16 violations of this act or the rules and regulations promulgated
17 hereunder for the prior three years as determined by the
18 department.

19 (F) A workload analysis is completed by the entity
20 requesting delegation which analyzes the volume of work
21 anticipated and the staffing and support resources needed to
22 administer the program and documents that the fees proposed to
23 be charged by the delegated agency to administer the sewage
24 facilities planning reviews are sufficient to allow the
25 delegated agency to act upon supplements within the time limits
26 established by this act.

27 (v) The department shall review and approve, prior to
28 delegation, the administrative procedures, ordinances, rules,
29 regulations, fee schedules and contracts for services proposed
30 for use by the delegated agency in the administration of the

delegated provisions of this act. Delegated agencies shall use forms provided by the department for the submittal and review of all supplements.

(vi) Supplements to the official plan shall be prepared by the person proposing the new land development and shall be reviewed and acted upon by the delegated agency. Within ten days of the approval or disapproval of the supplement, a copy of the completed planning modules and the approval or disapproval letter of the delegated agency shall be submitted to the department by the delegated agency.

(vii) Lack of participation by a municipality, local agency or county or joint county department of health in this delegation shall not influence the eligibility of the local agency serving that municipality or the local agency itself to receive eighty-five percent reimbursement under section 6(c) of this act, if qualified.

(4.4) In those areas of the municipality where a revision for new land development or exception to the requirement to revise is required to be approved by the department or a supplement is required to be approved by a delegated agency:

(i) The local agency shall not issue permits for individual sewage systems or community sewage systems until the municipality has received approval of a revision for new land development or exception to the requirement to revise from the department or a supplement has been approved by a delegated agency.

(ii) A contract for the sale of a lot, as defined in this act, for which a required revision for new land development, exception to the requirement to revise or a required supplement has not been approved shall not be enforceable by the seller

1 against the buyer unless it contains a statement that clearly
2 indicates to the buyer that sewage facilities are not available
3 for that lot and that sewage facilities will not be available
4 nor may construction begin until sewage facilities planning has
5 been approved. Any term of such contract purporting to waive the
6 rights of the buyer to the disclosures required in this clause
7 shall be void.

8 [(5) The limitations on permit issuance contained in
9 paragraph (4) of this subsection shall not apply:

10 (i) to those sections of the municipality where the
11 department finds that the zoning or applicable restrictive
12 covenants running with the land and enforceable by other
13 grantees in a subdivision provide for single family residential
14 lots of one acre or more or the proportionate equivalent acreage
15 for multiple family or commercial uses and provided that a
16 replacement system could be installed on the lot in the event
17 that the original system failed;

18 (ii) to existing subdivisions or sections thereof (where
19 subdivision plans therefor have been filed of record pursuant to
20 applicable law and ordinance prior to the effective date of this
21 subsection) where the department finds that either lots or homes
22 in the subdivision or sections thereof have been sold in good
23 faith to a purchaser for value prior to May 15, 1972 and not for
24 the purpose of avoiding the application of paragraph (4) of this
25 subsection. This subsection shall not relieve the municipality
26 of its planning responsibilities as specified in this act;

27 (iii) where the department finds it necessary to issue
28 permits for the abatement of pollution and/or the correction of
29 health hazards.]

30 (5) Revisions for new land development, exceptions to the

requirement to revise and supplements will not be required and permits for on-lot systems may be issued without such planning where either the department or delegated agency determines that:

(i) The official plan shows that those areas of the municipality are to be served by on-lot sewage disposal facilities.

(ii) The geology of the area proposed for the use of individual or community sewage systems is not conducive to nitrate-nitrogen groundwater contamination.

(iii) The area proposed for development is outside of high quality or exceptional value watersheds established under the regulations and policies promulgated under "The Clean Streams Law."

(iv) All subdivided lots and the remaining portion of the original tract after subdivision are one acre or larger.

(v) Soils testing and site evaluation establish that separate sites are available for both a permitted primary on-lot sewage system and a replacement on-lot sewage system on each lot of the subdivision.

(5.1) Revisions for new land development and supplements are not required for subdivisions proposing a connection to or an extension of public sewers where:

(i) The department determines that existing collection, conveyance and treatment facilities are in compliance with "The Clean Streams Law" and the rules and regulations promulgated thereunder.

(ii) The department determines that the permittees of the receiving sewerage facilities have submitted information under "The Clean Streams Law" which documents that the existing collection, conveyance and treatment system does not have an

1 existing hydraulic or organic overload or five-year projected
2 overload.

3 (iii) The applicant has provided certification from the
4 permittees of the collection, conveyance and treatment receiving
5 facilities to the municipality or delegated agency in which the
6 subdivision is located that there is capacity to receive and
7 treat the sewage flows from the applicant's proposed new land
8 development and that the additional wasteload from the proposed
9 new land development will not create a hydraulic or organic
10 overload or five-year projected overload.

11 (iv) The municipality has a current approved sewage
12 facilities plan update revision which is being implemented.

13 (5.2) Where the determination under paragraph (5) or (5.1)
14 of this subsection is made by a delegated agency, that agency
15 shall submit to the department quarterly reports which include
16 the names of the subdivisions, location of the subdivisions,
17 number of lots and projected sewage flow for each subdivision
18 exempted from the planning provisions under this subsection and
19 such other information as may be required under the rules and
20 regulations of the department.
21 The provisions of this subsection shall not apply to new land
22 development proposals intended to be served by sewage facilities
23 requiring a new or modified permit from the department under
24 "The Clean Streams Law."

25 (6) If the local agency determines that: (i) any change has
26 occurred in the physical conditions of any lands which will
27 materially affect the operation of the community sewage system
28 or individual sewage system covered by any permit issued by the
29 local agency under section 7 of this act, or (ii) one or more
30 tests material to the issuance of the permit has not been

1 properly conducted, or (iii) information material to the
2 issuance of the permit has been falsified, or (iv) the original
3 decision of the local agency otherwise failed to conform to the
4 provisions of this act or the rules and regulations of the
5 department, or (v) the permittee has violated the rules and
6 regulations of the department under which the permit was issued,
7 the permit shall be revoked. Such action shall be taken after
8 notice and opportunity for hearing has been given to the
9 permittee.

10 (7) If construction or installation of an individual sewage
11 system or community sewage system and of any building or
12 structure for which such system is to be installed has not
13 commenced within three years after the issuance of a permit for
14 such system, the said permit shall expire, and a new permit
15 shall be obtained prior to the commencement of said construction
16 or installation.

17 (8) Upon completion of inspection of deep soil test pits and
18 percolation tests, the inspector shall immediately notify the
19 property owner that the tests are complete. Within [five] three
20 days after receiving such notice, the property owner shall
21 backfill the test pits and holes. Any person who fails to comply
22 with the provisions of this subsection shall be subject to the
23 remedies and penalties provided in sections 12 [and 13], 13 and
24 13.1.

25 Section 5. Section 7.1 of the act, added December 2, 1976
26 (P.L.1264, No.280), is amended to read:

27 Section 7.1. Land Sale Contracts.--(a) Every contract for
28 the sale of a lot as defined in section 2 for which there is no
29 currently existing community sewage system available shall
30 contain a statement in the contract clearly indicating to the

1 buyer that there is no community sewage system available and
2 that a permit for an individual sewage system will have to be
3 obtained pursuant to section 7. The contract shall also clearly
4 state that the buyer should contact the local agency charged
5 with administering this act before signing the contract to
6 determine the procedure and requirements for obtaining a permit
7 for an individual sewage system if one has not already been
8 obtained. For purposes of this section the terms "community
9 sewage system" and "individual sewage system" shall be construed
10 to exclude any drainage system for the control of surface water
11 or the control of storm runoff water.

12 (a.1) Every contract for the sale of a lot as defined in
13 section 2 of this act which is served by an individual sewage
14 system which was installed under the ten-acre permit exemption
15 provisions of section 7 of this act shall contain a statement in
16 the contract that clearly indicates to the buyer that soils and
17 site testing were not conducted and that the owner of the
18 property or properties served by the system, at the time of a
19 malfunction, may be held liable for any contamination,
20 pollution, public health hazard or nuisance which occurs as the
21 result of the malfunction of a sewage system installed in
22 accordance with the permit exemption provisions of section 7 of
23 this act.

24 (a.2) Every contract for the sale of a lot served by a
25 holding tank, whether permanent or temporary, to which sewage is
26 conveyed by a water carrying system and which is designed and
27 constructed to facilitate ultimate disposal of the sewage at
28 another site, shall contain a statement in the contract that
29 clearly indicates that the property is served by such a tank and
30 shall provide a history of the annual cost of maintaining the

1 tank from the date of its installation or the effective date of
2 this amendatory act, whichever is later.

3 (b) Any contract for the sale of a lot which does not
4 conform to the requirements of [subsection (a)] this section
5 shall not be enforceable by the seller against the buyer. Any
6 term of such contract purporting to waive the rights of the
7 buyer to the disclosures required in [subsection (a)] this
8 section shall be void.

9 Section 6. The act is amended by adding sections to read:

10 Section 7.2. Soil Mottling.--(a) Within ninety days of the
11 effective date of this section, the Environmental Quality Board
12 shall promulgate proposed rules and regulations that govern the
13 ability of local agencies to issue permits for the construction
14 of individual residential on-lot sewage systems where soil
15 mottling is present. The rules and regulations shall include,
16 but not be limited to, the following:

17 (1) A requirement that a local agency perform a percolation
18 test when one is requested in writing by the owner of the
19 property, at the owner's expense, where the local agency
20 determines soil mottling is present.

21 (2) Where the sole reason for a property not meeting the
22 requirements for the installation of an individual residential
23 on-lot sewage system is the presence of soil mottling, the local
24 agency shall issue a permit for an individual residential on-lot
25 sewage system designed to meet the department's standards where
26 the property owner meets all of the following conditions:

27 (i) A qualified soil scientist, ~~qualified~~ OR QUALIFIED
28 REGISTERED PROFESSIONAL geologist, a certified sewage
29 enforcement officer or qualified registered professional
30 engineer, not employed by the local agency with jurisdiction

<—

1 over the property in question, confirms in writing that the soil
2 mottling observed in the test pits is not an indication of
3 either a regional or perched seasonal high water table.

4 (ii) The property owner provides evidence of financial
5 assurance to the local agency in an amount equal to the cost of
6 replacement of the individual residential sewage system proposed
7 and the reasonably anticipated cost of remedial measures to
8 clean up contaminated groundwater, to replace any contaminated
9 water supplies and to repair or replace a malfunction of the on-
10 lot system. In no case shall the local agency approve financial
11 assurance in an amount less than twenty thousand dollars
12 (\$20,000) or fifteen percent of the appraised value of the lot
13 and proposed residential dwelling for each year up to three
14 years. The local agency may require an additional two years'
15 financial assurance. The local agency shall waive the financial
16 assurance requirement after five years.

17 (iii) The property owner provides notification to the local
18 agency seven working days prior to conducting soil evaluations
19 under this section and a representative of the local agency may
20 observe the soil evaluations and may review resulting reports
21 and correspondence.

22 (iv) The property owner produces evidence of a clause in the
23 deed to the property that clearly indicates soil mottling is
24 present on the property and that an individual residential on-
25 lot sewage system meeting the requirements of this section was
26 installed on the property.

27 (b) The Environmental Quality Board shall promulgate rules
28 and regulations that are to establish the specific types of
29 financial assurance that are acceptable under this section, the
30 procedures local agencies are to follow in forfeiting the

financial assurance and the type of additional financial assurance required if the system approved under this section is replaced. The financial assurances may include an option where the local agency may offer, for a fee, financial assurance for systems installed under this section up to the amount established in subsection (a)(2)(ii).

(c) The municipality, sewage enforcement officer and department shall not be held liable for the performance of an individual residential on-lot sewage system approved under this section. The local agency shall not be held liable for the performance of an individual residential on-lot sewage system approved under this section, except where financial assurance is provided by the local agency under subsection (b).

Section 7.3. Individual Residential Spray Irrigation Systems.--Permits for the construction of individual residential spray irrigation systems may be issued by a local agency under this act when all of the following have been met:

(1) The local agency has employed or contracted the services of a certified sewage enforcement officer who has successfully completed department-sponsored mandatory training related to the siting, design, construction and inspection of individual residential spray irrigation systems.

(2) The site, soil conditions and system design meet the department's standards for these systems.

(3) The municipality and the department or delegated agency have approved any required supplement or revision for new land development for the proposed use of the system.

(4) The municipality has enacted a local ordinance assuring compliance of the system with regulations which establish standards for operation and maintenance of these systems. Such

assurance may be established through ordinance provisions requiring bonding, escrow or other security sufficient to cover the costs of future operation and maintenance of the system over its design life, establishment of properly chartered associations, trusts or other private legal entities to manage the systems, municipal ownership of the systems, establishment of a sewage management agency to manage the systems or any combination of the above.

(5) The applicant has submitted documentation to the local agency that the proposed use of an individual residential spray irrigation system will not adversely impact existing and proposed drinking water supplies and will not create a nuisance or public health hazard.

Section 7. Section 8 of the act, amended July 22, 1974 (P.L.621, No.208) and July 1, 1989 (P.L.124, No.26), is amended to read:

Section 8. Powers and Duties of Local Agencies.--(a) County or joint county departments of health shall administer [section 7] sections 7, 8, 12, 13, 13.1, 14, 15 and 16 of this act in the area subject to their jurisdiction. The county health department or joint county departments of health may administer the continuing maintenance provisions of section 9 and the enforcement provisions of section 12, if the local agency under the jurisdiction of the county health department or joint county departments of health has relinquished its authority, by resolution, to the county health department or joint county departments of health. In all other areas, [section 7] sections 7, 8, 12, 13, 13.1, 14, 15 and 16 of this act shall be administered by each municipality unless said municipality has transferred or delegated the administration of [section 7]

1 sections 7, 8, 12, 13, 13.1, 14, 15 and 16 of this act to
2 another local agency, or is cooperating in said administration,
3 in conformance with the act of July 12, 1972 (P.L.762, No.180),
4 and said other local agency has accepted administration of
5 [section 7] sections 7, 8, 12, 13, 13.1, 14, 15 and 16 of this
6 act. Municipalities are hereby encouraged jointly to administer
7 [section 7] sections 7, 8, 12, 13, 13.1, 14, 15 and 16 of this
8 act on a county or joint county level. No local agency shall
9 voluntarily surrender administration of the provisions of this
10 act except to another local agency pursuant to this section.

11 (b) Each local agency in addition to the powers and duties
12 conferred upon it by existing law shall have the power and the
13 duty:

14 (1) To employ an adequate number of sewage enforcement
15 officers or contract with individuals, firms or corporations to
16 adequately perform the services of sewage enforcement officers
17 to administer the provisions of section 7 of this act within the
18 time periods set forth in this act and in accordance with the
19 rules and regulations of the department. No person shall be
20 employed or contracted as a sewage enforcement officer unless
21 said person has been certified ["qualified"] by the department
22 pursuant to standards set by the Environmental Quality Board. No
23 person shall be employed or contracted as a sewage enforcement
24 officer to administer the provisions of section 7 of this act
25 with respect to a community or an individual sewage system for
26 which he was or is the contractor. In such a case, the local
27 agency shall employ or contract with a certified ["qualified"]
28 enforcement officer from an adjoining local agency to administer
29 the provisions of section 7 of this act with respect to the
30 particular individual or community sewage system.

(1.1) To have at least one alternate sewage enforcement officer as authorized by the local agency to work in the municipality or municipalities of the local agency.

(2) To employ or contract with other technical and administrative personnel necessary to support the activities of the sewage enforcement officer and the local agency.

(2.1) To adopt by resolution a list of individuals who are sewage enforcement officers employed by companies or corporations under contract with the local agency to perform the services of sewage enforcement officers.

(3) To set rates of compensation, maintain offices, purchase necessary equipment and supplies.

(4) To set and collect application fees. The fee schedule may establish different charges for various types of individual sewage systems and community sewage systems consistent with the administrative costs of reviewing the application and supervising the installation of said system. When engineering or consulting services are required by the local agency to complete their review of a permit application, the application or review fees charged for such services shall be reasonable and in accordance with the ordinary and customary charges by the engineer or consultant for similar service in the community, and in no event shall the fees exceed the rate or cost charged by the engineer or consultant to the local agency when fees are not reimbursed by or otherwise imposed on applicants.

(i) In the event the applicant disputes the amount of any such fees or charges, the applicant shall, within ten working days of the date of billing, notify the local agency that the fees or expenses are disputed as unreasonable or unnecessary, in which case the local agency shall not delay or disapprove an

1 application for any approval or permit due to the applicant's
2 dispute over fees or charges.

3 (ii) If, within twenty days from the date of billing, the
4 local agency and the applicant cannot agree on the amount of
5 fees or charges which are reasonable and necessary, the
6 applicant and local agency shall jointly, by mutual agreement,
7 appoint a professional engineer OR GEOLOGIST licensed in this <—
8 Commonwealth, who is also certified as a sewage enforcement
9 officer, to review the fees and charges and make a determination
10 as to the amount which is reasonable and necessary.

11 (iii) In the event that the local agency and applicant
12 cannot agree upon the professional engineer OR GEOLOGIST to be <—
13 appointed within twenty days of the billing date, then, upon
14 application of either party, the president judge of the court of
15 common pleas of the judicial district in which the municipality
16 is located or, if at the time there is no president judge, then
17 the senior active judge then sitting, shall appoint such
18 engineer OR GEOLOGIST. The engineer OR GEOLOGIST shall be <—
19 neither the local agency's engineer OR GEOLOGIST nor any <—
20 professional engineer OR GEOLOGIST nor consultant who has been <—
21 retained by or performed services for the local agency or the
22 applicant within the preceding five years.

23 (iv) The professional engineer OR PROFESSIONAL GEOLOGIST so <—
24 appointed shall hear such evidence and review such documentation
25 as the engineer, in his sole discretion, deems necessary and
26 render a decision within fifty days of the billing date. The
27 applicant shall be required to pay the entire amount determined
28 in the decision immediately.

29 (v) The fee of the appointed professional engineer OR <—
30 PROFESSIONAL GEOLOGIST for determining the reasonable and

1 necessary expenses shall be paid by the applicant if the amount
2 of the payment required in the decision is equal to or greater
3 than the original bill. If the amount of payment required in the
4 decision is less than the original bill by five hundred dollars
5 (\$500) or more, the local agency shall pay the fee of the
6 professional engineer OR PROFESSIONAL GEOLOGIST. Otherwise, the <—
7 local agency and the applicant shall each pay one-half of the
8 fee of the appointed professional engineer OR PROFESSIONAL <—
9 GEOLOGIST.

10 (4.1) To set and collect fees necessary to support the
11 administrative and personnel costs of a maintenance inspection
12 and enforcement program.

13 (5) To make or cause to be made, such inspections and tests
14 as may be necessary to carry out the provisions of section 7 of
15 this act, and its authorized representatives shall have the
16 right to enter upon lands for said purpose.

17 (i) Within fifteen working days of the local agency's
18 receipt of a permit application, or by such later date as the
19 applicant may request in writing or by such later date as the
20 sewage enforcement officer and applicant may agree, which is
21 confirmed in writing by the sewage enforcement officer, site
22 suitability review, soil probe testing and soil percolation
23 testing shall be completed by the local agency and the results
24 provided to the applicant in writing.

25 (ii) It shall be the obligation of the applicant to have the
26 site prepared in the manner required by written instructions
27 provided to the applicant after receipt of at least forty-eight
28 hours' notice from the local agency or sewage enforcement
29 officer of the anticipated time such soils tests will be
30 performed.

1 (iii) Failure of the local agency to comply with these time
2 limits shall entitle the applicant, upon request, to a refund of
3 fees paid for soil testing that was not performed by the local
4 agency, and the applicant shall be entitled to submit results of
5 soils tests, on forms provided by the department, conducted in a
6 manner consistent with this act and the regulations hereunder by
7 any certified sewage enforcement officer, who need not be
8 employed by or under contract with the local agency. Such test
9 results shall be accepted by the local agency and its sewage
10 enforcement officer, who shall rely upon the results of such
11 tests in acting on any application.

12 (iv) If an applicant, after receiving the notice of testing,
13 fails to have the site prepared for soil testing in a manner
14 required by this section, the applicant shall not have the right
15 to submit the results of soils testing performed by a certified
16 sewage enforcement officer not employed by or under contract
17 with the local agency, nor shall the applicant be entitled to a
18 refund of fees paid for soil testing as provided in this
19 section.

20 (v) Neither the municipality, local agency, local agency's
21 sewage enforcement officer nor the department shall be held
22 liable on any cause of action arising out of soil tests
23 performed pursuant to this section by a certified sewage
24 enforcement officer not employed by or under contract with the
25 local agency. In the event any such party is named as a
26 defendant in such cause of action, any court of competent
27 jurisdiction may, in its discretion, award such costs to the
28 parties as it deems appropriate.

29 (6) To cease issuing permits in designated areas after
30 notice and opportunity for departmental hearing except for the

1 abatement of existing health hazards or public nuisance,
2 notwithstanding the provisions of section 7, upon receipt of a
3 department order pursuant to section 10(7) of this act.

4 (7) To proceed under section 12 of this act to restrain
5 violations of this act and the rules and regulations adopted
6 hereunder.

7 (8) To submit such reports and data to the department as the
8 department may by its rules and regulations or by order require.

9 (9) To adopt and maintain standards and procedures for
10 applications and permits identical to those of the department.
11 Any other rules or regulations which the local agency deems
12 necessary in order to administer and enforce section 7 may only
13 be adopted if they are consistent with this act and the rules
14 and regulations adopted hereunder.

15 (10) To make such inspections of and measurements on public
16 or private properties which are determined by the local agency's
17 authorized representative to have natural or manmade features
18 from which specific isolation distances are required prior to
19 the approval of on-lot sewage disposal system usage in
20 subdivisions or individual lots. The local agency's authorized
21 representative shall have the right to enter upon lands for
22 these purposes.

23 (c) Sewage enforcement officers employed or contracted by
24 local agencies in accordance with this act, in performing their
25 duties as required under this act, [may] shall accept prior
26 testing data and information obtained by a previous sewage
27 enforcement officer, provided that the site and prior testing
28 meets all of the [following criteria and the sewage enforcement
29 officer certifies the same to the local agency:] criteria
30 contained in the following paragraphs 1 through 9 of this

1 subsection and the current sewage enforcement officer certifies
2 the same to the local agency. There shall be a presumption that,
3 unless the prior sewage enforcement officer's certification has
4 been revoked or suspended by the department or the prior sewage
5 enforcement officer's certification has been voluntarily
6 surrendered, the testing data and information obtained by the
7 prior sewage enforcement officer is valid unless the currently
8 employed sewage enforcement officer finds that one or more of
9 the criteria in the following paragraphs 1 through 9 of this
10 subsection are not met:

11 (1) The soil testing performed on the property in question
12 has not been cited in a revocation, suspension or other
13 agreement to surrender certification which indicates violations
14 of soil testing procedures by the previous sewage enforcement
15 officer.

16 (2) The exact location of the test to be used for issuance
17 of a permit must be verifiable by at least one of the following
18 methods:

19 (i) Location of the test pit and percolation hole remnants
20 on the lot by the current sewage enforcement officer.

21 (ii) The existence of recorded measurements from at least
22 two permanent landmarks on the property in question establishing
23 the original test location.

24 (iii) A scale drawing of the lot or property in question
25 indicating the location of the tests by reference to at least
26 two permanent landmarks.

27 (iv) Identification of the exact location of the tests by
28 the prior sewage enforcement officer, provided that his or her
29 certification has not been revoked, suspended or voluntarily
30 surrendered to the department.

1 (3) Verification that the percolation test and soils
2 evaluation was conducted in accordance with the applicable
3 regulations.

4 (4) Soils description and percolation test data are
5 available and recorded on the prescribed form, or its
6 equivalent, in sufficient quantity and quality to be interpreted
7 by others.

8 (5) The soil probes were conducted within ten feet of the
9 proposed absorption area.

10 (6) The percolation test on the lot was performed on the
11 site of the proposed absorption area.

12 (7) The person who originally observed or conducted the
13 testing was certified under the current certification
14 requirements of this act.

15 (8) No inaccuracies or falsifications of the test data are
16 apparent or identifiable.

17 (9) No changes to the site have occurred since the time of
18 the original testing[.] which will materially affect the siting
19 or operation of an individual or community on-lot sewage
20 disposal system.

21 (d) If a sewage enforcement officer rejects an application
22 for a permit or previous tests performed within the immediately
23 preceding six years and certified by a previous sewage
24 enforcement officer, the retesting and reapplication fees shall
25 be waived to the applicant. The local agency shall pay for any
26 equipment and operators required for a retest and for any
27 necessary redesign of the system. This subsection shall not
28 apply if changes have occurred in the physical condition of
29 lands which will materially affect the siting or operation of an
30 individual or community on-lot sewage disposal system covered by

1 a permit or for which soils testing has been performed by a
2 local agency or the sewage enforcement officer's certification
3 has been revoked or suspended by the department for cause
4 related to the siting, design or installation inspection of on-
5 lot systems.

6 (e) No municipality, local agency or sewage enforcement
7 officer may, orally or in writing, suggest, recommend or require
8 the use of any particular consultant, soil scientist or
9 professional engineer, or any individual or firm providing such
10 services where such services may be required or are subject to
11 review pursuant to this act or the regulations hereunder. No
12 sewage enforcement officer shall perform any consulting or
13 design work or related services required or regulated under this
14 act within the municipality or local agency by which he is
15 employed or with which he has a contractual relationship unless
16 such services are set in the fee schedule of the local agency,
17 the fees are paid directly to the local agency and the records
18 and products relating to such consultation or design work are
19 reviewed by and any subsequent permit is issued by another
20 sewage enforcement officer employed by or under contract with
21 the local agency. A sewage enforcement officer may not conduct a
22 test, issue a permit or participate in the official processing
23 of an application or official review of a planning module for an
24 individual or community on-lot sewage system in which the sewage
25 enforcement officer, a relative of the sewage enforcement
26 officer, a business associate of the sewage enforcement officer,
27 or an employer of the sewage enforcement officer, other than the
28 local agency, has a financial interest.

29 (f) Any minimum distance requirement between a private well
30 and a proposed absorption area specified in the regulations

1 under this act shall not be applicable if the local agency
2 finds, after reviewing appropriate groundwater studies submitted
3 by an applicant, that the installation of a proposed individual
4 sewage system does not pose a threat of pollution to any well on
5 the same lot within the distance specified by regulation. The
6 minimum distance between a proposed individual sewage system on
7 the applicant's lot and any wells on any other lot must be met
8 as specified in the regulations under this act. A local agency,
9 other than a delegated agency, shall act upon any application
10 for an exception under this subsection no later than forty-five
11 days after receipt of a request for an exception. A delegated
12 agency shall act on any application for an exception under this
13 subsection no later than thirty days after receipt of a request
14 for exception. Reasonable costs incurred by the local agency in
15 evaluating such application for exception may be charged to the
16 applicant. The local agency, municipality, sewage enforcement
17 officer and department shall incur no liability as a result of
18 the granting of an exception under this subsection. Every
19 contract for sale of a lot as defined in section 2 of this act
20 which is served by an individual sewage system which was
21 installed under this subsection with an isolation distance less
22 than the distance specified by regulation shall contain a
23 statement in the contract that clearly indicates to the buyer
24 that the isolation distances required by regulation between the
25 individual on-lot system components and the well on the property
26 being sold were not met.

27 (g) Any contract for the sale of a lot which does not
28 conform to the requirements of this section shall not be
29 enforceable by the seller against the buyer. Any term of such
30 contract purporting to waive the rights of the buyer to the

1 disclosures required in this section shall be void.

2 Section 8. Sections 9, 10 and 11 of the act, amended July 1,
3 1989 (P.L.124, No.26), are amended to read:

4 Section 9. Powers and Duties of the Environmental Quality
5 Board.--[(a)] The Environmental Quality Board shall have the
6 power and its duty shall be to adopt such rules and regulations
7 of the department, applicable throughout the Commonwealth, as
8 shall be necessary for the implementation of the provisions of
9 this act. Such rules and regulations shall establish standards
10 for the construction, installation, alteration, maintenance and
11 operation of individual sewage systems and community sewage
12 systems and of sewage treatment plants in such systems, take
13 cognizance of latest technological developments in the field of
14 individual sewage systems, including adoption of standards
15 providing for use of alternate individual sewage systems,
16 standards for enforcement programs of local agencies and for the
17 certification of personnel employed by local agencies to
18 administer the provisions of this act, standards for the
19 preparation, review and acceptance of official plans, and
20 requirements for the disbursement of State and Federal funds to
21 municipalities and local agencies for planning, personnel and
22 construction of sewage disposal systems. Such rules and
23 regulations shall be adopted pursuant to the act of July 31,
24 1968 (P.L.769, No.240), known as the "Commonwealth Documents
25 Law," upon such notice and after such public hearings as the
26 board deems appropriate. The rules and regulations adopted by
27 the board under this section shall supersede any ordinance,
28 rules or regulations of local agencies which are not in
29 conformity with the rules and regulations of the board.

30 [(b) Within one year of the effective date of this

1 amendatory act, the board shall promulgate proposed rules and
2 regulations that govern the ability of local agencies to issue
3 permits for the construction of individual residential sewage
4 systems where soil mottling is present. The rules and
5 regulations shall include, but not be limited to, the following:

6 (1) A requirement that a local agency perform a percolation
7 test when one is requested in writing by the owner of the
8 property, at the owner's expense, where the local agency
9 determines soil mottling is present.

10 (2) Where the sole reason for a property not meeting the
11 requirements for the installation of an individual residential
12 sewage system is the presence of soil mottling and where no
13 other approved alternate sewage systems can be permitted on the
14 property, the local agency shall issue a permit for an
15 individual sewage system where the property owner meets all of
16 the following conditions:

17 (i) The property owner demonstrates that at least three
18 individual residential sewage systems in close proximity to the
19 applicant's property have been functioning without pollutional
20 discharges to surface or groundwater for five years or more and
21 have soil conditions similar to the applicant's property as
22 verified by a qualified soil scientist.

23 (ii) The property owner proposes an individual residential
24 sewage system that, in the opinion of a registered professional
25 engineer, can be expected to function in the soils on the
26 property without pollutional discharges to surface or
27 groundwater.

28 (iii) The property owner provides evidence of financial
29 assurance to the local agency in an amount equal to the cost of
30 replacement of the individual residential sewage system proposed

1 and the reasonably anticipated cost of remedial measures to
2 clean up contaminated groundwater and to replace any
3 contaminated water supplies. In no case shall the local agency
4 approve financial assurance in an amount less than twenty
5 thousand dollars (\$20,000) for each year up to three years. The
6 township may require an additional two years financial
7 assurance. The local agency may waive the financial assurance
8 requirement after five years if there is no evidence of
9 pollutional discharge to surface or groundwater.

10 (iv) The property owner produces evidence of a clause in the
11 deed to the property that clearly indicates soil mottling is
12 present on the property and that an individual residential
13 sewage system meeting the requirements of this section was
14 installed on the property.

15 (c) The Environmental Quality Board shall promulgate rules
16 and regulations that are to establish the specific types of
17 financial assurance that are acceptable under this section, the
18 procedures local agencies are to follow in forfeiting the
19 financial assurance and the type of additional financial
20 assurance required if a system approved under this section is
21 replaced. The financial assurances may include an option where
22 the local agency may offer, for a fee, financial assurance for
23 systems installed under this section up to the amount
24 established in subsection (b)(2)(iii).

25 (d) The local agency shall not be held liable for the
26 performance of an individual residential sewage system approved
27 under this section, except where financial assurance is provided
28 by the local agency under subsection (c).]

29 Section 10. Powers and Duties of the Department of
30 Environmental Resources.--The department shall have the power

1 and its duty shall be:

2 (1) To order municipalities to submit official plans and
3 revisions thereto within such time and under such conditions as
4 the rules and regulations promulgated under this act may
5 provide.

6 (2) To approve or disapprove official plans and [revisions
7 thereto.], at its discretion, to approve or disapprove revisions
8 thereto in accordance with regulations of the department. The
9 department may review and act upon a revision for new land
10 development or an exception to the requirement to revise or, at
11 its discretion, accept the municipality's review and approval of
12 the revision for new land development or exception to the
13 requirement to revise by a municipality without further action.
14 If the department disapproves, it shall provide a written
15 explanation of the deficiencies to the municipality.

16 (3) To order the implementation of official plans and
17 revisions thereto.

18 (4) To administer grants and reimbursements to local
19 agencies as provided by section 6 of this act.

20 (5) To review the performance of local agencies in the
21 administration of [section 7 of] this act.

22 (6) To cooperate with local agencies, the advisory committee
23 and industry in studying and evaluating new methods of sewage
24 disposal. For the purpose of investigating innovative or
25 alternative on-lot sewage systems, the department may enter into
26 contracts with private entities. [Such contracts shall be funded
27 from funds specifically appropriated by the General Assembly for
28 this purpose.]

29 (7) To order a local agency to undertake actions deemed by
30 the department necessary to effectively administer [effectively

1 section 7 of] this act in conformance with the rules and
2 regulations of the department.

3 (7.1) To review the performance of delegated agencies in the
4 performance of the duties established by delegation agreements
5 authorized by sections 5 and 7 of this act and to revoke such
6 agreements for cause.

7 (8) To enter upon lands and make inspections and to require
8 the submission of papers, books and records by local agencies
9 for the purposes set forth in this act.

10 (9) To train sewage enforcement officers and to require
11 sewage enforcement officers to participate in training. [Such
12 training shall be funded from funds specifically appropriated by
13 the General Assembly for this purpose.]

14 (10) To revoke or suspend the certification of sewage
15 enforcement officers for cause, or to reinstate same, in
16 accordance with the rules and regulations of the department[:
17 Provided, however, That such actions of the department shall
18 become effective only after notice and an opportunity for
19 hearing before the certification board has been given]. The
20 department shall consider complaints filed by local agencies or
21 the public relating to the performance of local sewage
22 enforcement officers.

23 (10.1) To revoke or suspend the certification of a sewage
24 enforcement officer for cause, including, but not limited to,
25 negligence or providing false information related to the
26 administration of this act and for violations of this act which
27 are not related to the issuance of a permit.

28 (11) To develop a list of firms or agencies that provide
29 testing services for evaluating gradation specifications of sand
30 for use in elevated sand mound on-lot disposal systems. A

1 permittee that is the sand supplier for an elevated sand mound
2 shall certify in writing that sand used in these systems meets
3 the requirements established by the department.

4 (12) To set and collect a processing fee from applicants for
5 review of sewage facilities planning modules for new land
6 development by the department. The fees shall be as follows:

7 (i) For any proposal to utilize on-lot sewage systems which
8 proposal does not qualify as an exception to the requirement to
9 revise an official plan in accordance with the rules and
10 regulations of the department, the fee shall be one thousand
11 seven hundred forty dollars (\$1,740).

12 (ii) For any proposal which can reasonably be expected to
13 result in a surface discharge to waters of the Commonwealth or
14 the surface of the ground of greater than two thousand gallons
15 per day, or a discharge to a subsurface absorption area for
16 which a permit is required under the act of June 22, 1937
17 (P.L.1987, No.394), known as "The Clean Streams Law," the fee
18 shall be five thousand eight hundred dollars (\$5,800).

19 (iii) For any proposal to utilize public sewerage services
20 which utilization does not qualify as or is not designated as a
21 module for a minor sewer project pursuant to the regulations of
22 the department, the fee shall be one thousand one hundred sixty
23 dollars (\$1,160).

24 (iv) For proposals consisting of one lot subdivided from a
25 parent tract existing as of the effective date of this act,
26 there shall be no fee. The subdivision of a second lot from the
27 tract shall disqualify the applicant from the fee exemption.

28 (v) For all other proposals not designated in subparagraphs
29 (i), (ii), (iii) and (iv) of this paragraph, the fee shall be
30 five hundred eighty dollars (\$580).

1 (13) To establish minimum training requirements using any
2 department curriculum of training as a prerequisite for
3 applicants for certification as a sewage enforcement officer.
4 Such curriculum may include a period of training under another
5 certified sewage enforcement officer selected by the department
6 as a prerequisite to certification for candidates who pass the
7 certification test.

8 (14) To require, at the department's discretion, a certified
9 sewage enforcement officer whose performance has been evaluated
10 and found deficient by the department to complete a training
11 course which may include a department curriculum of training or
12 a period of training under the direction of another certified
13 sewage enforcement officer selected by the department for a time
14 period established by the department. This training may be used
15 by the department as an alternative to suspension or as a
16 requirement for reinstatement of a suspended certification. The
17 local agency employing the training sewage enforcement officer
18 must authorize that officer to provide such training services
19 which will be offered within the jurisdiction of that local
20 agency. The costs of department-required training incurred by
21 the training sewage enforcement officer and the local agency
22 employing the training sewage enforcement officer shall be paid
23 by the department from funds made available under section 13.2
24 of this act.

25 (15) To delegate the review of certain alternate sewage
26 systems as designated by the department to sewage enforcement
27 officers, within the area of their jurisdiction, qualified by
28 the department to review such systems.

29 (16) To require local agencies to take necessary action to
30 provide timely service, including, but not limited to, utilizing

the services of an alternate sewage enforcement officer,
employing temporary sewage enforcement officers and entering
contracts for service.

(17) To collect a fee of up to fifty dollars (\$50) for the
technical manual for sewage enforcement officers, except that
certified sewage enforcement officers, local agencies and
municipalities shall not be charged a fee.

(18) To establish a training course for on-lot sewage system
installers, to issue certificates of completion, to publish a
listing of those installers who successfully completed the
course and to charge a fee for attendance at the course.

(19) To provide specific written reasons for its decision to
any applicant whenever any plan or permit application required
under the provisions of this act has been returned because the
department has determined it to be incomplete, because the
department requests either additional information or
verification of information submitted or because the department
has issued a denial. Such information shall specify the defects
found in the submission, plan or permit application and describe
the requirements which have not been met.

(20) To require municipalities and municipal authorities to
provide municipal waste load management information regarding
sewage capacity and expansion plans to any individual upon
request.

Section 11. Certification Board.--(a) (1) There is hereby
created within the department a State Board for Certification of
Sewage Enforcement Officers. The board shall consist of five
members to be appointed by the secretary. One member shall be a
representative of local government; one member shall be a sewage
enforcement officer certified under the provisions of this act;

1 one member shall be a representative of the engineering
2 profession; and two additional members shall be chosen from a
3 list of nominees submitted to the secretary by the advisory
4 committee. The advisory committee shall designate a minimum of
5 three nominees for the latter two positions. The original
6 appointed members of the board in the order listed above shall
7 hold office for one, two, three, three and four years,
8 respectively. Thereafter, each appointment shall be for a period
9 of four years' duration. The secretary may reappoint board
10 members for successive terms. Members of the board shall remain
11 in office until a successor is appointed and qualified. If
12 vacancies occur prior to completion of a term, the secretary
13 shall appoint another member in accordance with this section to
14 fill the unexpired term.

15 (2) The secretary, or his representative, shall call the
16 first meeting of the board at which time a chairman of the board
17 shall be elected. Thereafter, the chairman shall be elected
18 annually. Three members of the board shall constitute a quorum.
19 Meetings may be called by the chairman as needed to conduct the
20 business of the board.

21 (3) The members of the board shall receive no compensation
22 for their services but shall be reimbursed for actual and
23 necessary expenses incurred in the performance of their duties.

24 (b) The board shall have the power and its duty shall be, in
25 accordance with the rules and regulations of the department, to:

26 (1) Review and pass upon applications for certification of
27 sewage enforcement officers within thirty days of the receipt of
28 the test results from the testing contractor. If the board does
29 not meet within this time period, the applicants who have
30 achieved the necessary passing score on the certification

1 examination and who are not in violation or restrained by any
2 department regulation from certification shall be deemed to be
3 certified.

4 (2) Administer such examinations as prepared by the
5 department, as may be deemed necessary to determine the fitness
6 of candidates for certification. Such examinations shall be held
7 no less than four times in each calendar year. The board shall
8 determine and shall announce, in sufficient time, the location
9 and time for such examinations, except that the board shall
10 allow the department to schedule special "walk-in" examinations
11 when a local agency demonstrates an immediate need to obtain a
12 sewage enforcement officer. During the first year of this act,
13 no fees will be charged for said examinations. During the second
14 and subsequent years, the board is hereby authorized to collect
15 a fee of ten dollars (\$10) from each applicant.

16 (3) Hold hearings and issue adjudications under the
17 provisions of the act of June 4, 1945 (P.L.1388, No.442), known
18 as the "Administrative Agency Law," on any revocation,
19 suspension or reinstatement of certification by the department:
20 Provided, That the filing of an appeal with the board shall not
21 operate as an automatic supersedeas of the action of the
22 department. The provisions of section 1921-A of The
23 Administrative Code notwithstanding, such actions of the
24 department shall not be appealable to the Environmental Hearing
25 Board.

26 (4) Consider for renewal biennially certificates issued
27 under this section, and collect a fee of [five dollars (\$5)]
28 fifty dollars (\$50) or such reasonable fee as the department
29 shall establish by regulation from each certificate holder for
30 such renewal. Fees collected in excess of the actual

1 administrative cost to the board to process certification
2 renewals shall be dedicated to training sewage enforcement
3 officers.

4 (5) Compile and keep current a register showing the names
5 and addresses of certified sewage enforcement officers. Copies
6 of this register shall be furnished on request for the
7 department and for municipalities and upon payment of such
8 reasonable fee for all others, as the department shall
9 establish.

10 Section 9. Section 13 of the act, amended November 26, 1978
11 (P.L.1244, No.296) and repealed in part October 5, 1980
12 (P.L.693, No.142), is amended to read:

13 Section 13. Penalties.--Any person who shall violate any
14 provision of [section 7 of] this act or the rules, regulations
15 or standards promulgated [thereunder] pursuant to this act or
16 who is the owner of a property on which a condition exists which
17 constitutes a nuisance under this act or who resists or
18 interferes with any officer, agent or employe of a local agency
19 or the department, in accordance with the provisions of this
20 act, in the performance of his duties, shall be guilty of a
21 summary offense. Upon conviction thereof, such person shall be
22 sentenced to pay a fine of not less than [one hundred dollars
23 (\$100) and costs, and not more than three hundred dollars (\$300)
24 and costs, or in default thereof, shall be confined in the
25 county jail for a period of not more than thirty days.] five
26 hundred dollars (\$500) nor more than five thousand dollars
27 (\$5,000), plus costs, or to imprisonment not to exceed ninety
28 days, or both.

29 Section 10. The act is amended by adding sections to read:

30 Section 13.1. Fines, Civil Penalties and Fees.--(a) In

1 addition to proceeding under any other remedy available at law
2 or in equity for a violation of any provision of this act or any
3 rule or regulation promulgated under this act or any order or
4 permit issued by the department, municipality or local agency
5 pursuant to this act, the department, municipality or local
6 agency, after notice and hearing, may assess a civil penalty
7 against any person for that violation. In addition, the
8 department, municipality or local agency may assess the cost of
9 damages caused by such violation and the cost of correcting such
10 violation. Before assessing a civil penalty or such costs, the
11 department, municipality or local agency shall provide a
12 violation with a notice of proposed assessment which cites the
13 violation of this act, regulation, permit or order issued
14 thereunder and offer to conduct an assessment hearing to
15 evaluate the violation and the amount of the penalty or cost.
16 The notice of proposed assessment shall contain an explanation
17 of the right to a hearing and appeal. The department,
18 municipality or local agency shall assign a representative to
19 hold the assessment hearing. The assessment hearing shall not be
20 governed by requirements for formal adjudicatory hearings and
21 may be held at any time at the convenience of the parties. The
22 civil penalty may be assessed whether or not the violation was
23 willful. The civil penalty so assessed shall not be less than
24 three hundred dollars (\$300) and not more than two thousand five
25 hundred dollars (\$2,500) for each violation. In determining the
26 amount of the penalty, the department, municipality or local
27 agency shall consider:

28 (1) the willfulness of the violation;

29 (2) damage to water, land or other natural resources or
30 their uses, cost of restoration and abatement;

1 (3) savings resulting to the person in consequence of the
2 violation;

3 (4) deterrence of future violation; and

4 (5) other relevant factors.

5 (b) If a person against whom costs or a civil penalty has
6 been assessed after notice and hearing pursuant to subsection

7 (a) fails to pay the assessed costs or penalty in full or to

8 perfect an appeal de novo under subsection (c) within thirty

9 days following assessment of the civil penalty, such failure to

10 pay or perfect an appeal shall constitute a separate violation

11 for which an additional civil penalty may be assessed pursuant

12 to subsection (a). Additional violations shall be deemed to

13 occur and additional civil penalties may be assessed pursuant to

14 subsection (a) each time a person fails to pay or perfect an

15 appeal under subsection (c).

16 (c) When the department, municipality or local agency has

17 assessed costs or a civil penalty pursuant to subsection (a) or

18 (b), the person assessed with the costs or civil penalty shall

19 then have thirty days to pay the costs or penalty in full. If

20 the person wishes to contest the penalty or the fact of the

21 violation, the person shall have a right to an appeal de novo

22 pursuant to section 16 of this act. The person shall forward the

23 amount of the civil penalty to the agency or entity assessing

24 the civil penalty within the thirty-day period for placement in

25 an escrow account with the State Treasurer or any bank in this

26 Commonwealth, post an irrevocable letter of credit issued by a

27 Federal or Commonwealth-chartered lending institution or post an

28 appeal bond to the agency or entity assessing the civil penalty

29 within such thirty days in the amount of the assessed civil

30 penalty or other such amount as may be approved by a court of

1 competent jurisdiction or the Environmental Hearing Board. The
2 bond must be executed by a surety licensed to do business in
3 this Commonwealth and in a form satisfactory to the agency or
4 entity assessing the civil penalty. If, through administrative
5 or final judicial review of the proposed assessed penalty, it is
6 determined that no violation occurred or that the amount of the
7 penalty is reduced, the agency or entity which assessed the
8 civil penalty shall, within thirty days, remit the appropriate
9 amount to the person. Failure to make the required deposit in
10 escrow or submit an irrevocable letter of credit or a surety
11 bond as provided in this subsection shall result in a waiver of
12 all legal rights to appeal the violation or the amount of the
13 penalty.

14 (d) In any case where the department, municipality or local
15 agency determines that damage resulting from the violation is of
16 a continuing nature, the department, municipality or local
17 agency may impose a weekly assessment of not more than two
18 thousand five hundred dollars (\$2,500) per week for each week
19 the violation continues unabated by the violator. The weekly
20 assessment shall accrue indefinitely after the date of notice of
21 the assessment to the violator.

22 (e) Costs and civil penalties shall be payable to the agency
23 or entity assessing the civil penalty and shall be collectable
24 in any manner provided by law for the collection of debts. If
25 any person liable to pay these costs or penalty neglects or
26 refuses to pay the same after demand, the amount of the costs or
27 civil penalty, together with interest and any costs that may
28 accrue, shall constitute a judgment in favor of the agency or
29 entity assessing the costs or civil penalty upon the real
30 property of the person from the date it has been entered and

1 docketed on record by the prothonotary of the county where such
2 is situated. The agency or entity assessing the cost or civil
3 penalty may, at any time, transmit to the prothonotaries of the
4 respective counties certified copies of all these judgments, and
5 it shall be the duty of each prothonotary to enter and docket
6 them and to index the same as judgments are indexed, without
7 requiring the payment of costs as a condition precedent to the
8 entry thereof.

9 (f) Any municipality which fails to submit any official
10 plan, update revision or special study thereto or has not
11 revised or implemented its official plan as required by any
12 rule, regulation or order of the department shall be subject to
13 a civil penalty. The civil penalty so assessed shall be a
14 minimum of three hundred dollars (\$300) per day. The penalty
15 shall be assessed for each day of the failure commencing on the
16 thirtieth day after a date specified for compliance in an order
17 by the department and shall continue until that time as the
18 municipality submits the required official plan, update revision
19 or special study or has commenced implementation of its official
20 plan in accordance with a schedule approved by the department.
21 The penalty shall be paid on the fifteenth day of each
22 succeeding month and shall be sent to the regional office for
23 the region of the department in which the municipality is
24 located.

25 Section 13.2. Disposition of Fines, Civil Penalties and
26 Fees.--(a) There is hereby created a restricted nonlapsing
27 account for the deposit of all fees, fines and civil penalties
28 authorized by this act, except as provided under subsection (c),
29 to be collected by the department. All moneys in this account
30 are hereby appropriated to the department, upon the Governor's

1 authorization, for the costs of administering the provisions of
2 this act.

3 (b) Fines and civil penalties collected pursuant to this act
4 by a municipality or local agency shall be placed in a
5 restricted account and shall only be used for the repair of
6 damage or mitigation of threats to the public health, for costs
7 incurred to investigate and take enforcement action and for the
8 administration of this act. Any fees collected by municipalities
9 or local agencies pursuant to this act may only be used for the
10 administration of this act.

11 (c) There is hereby created a restricted, nonlapsing account
12 for the deposit of fines and penalties collected by the
13 department under this act from municipalities in accordance with
14 section 13.1(f) of this act. Municipalities being assessed
15 pursuant to this act may apply to the department for funding
16 from this account to abate nuisances or correct other violations
17 of this act. Disbursement of moneys to these municipalities
18 shall be in accordance with plans approved by the department and
19 shall be allotted as the work to abate the nuisance or make the
20 required improvements proceeds. The department shall allow
21 municipalities to pay the fines or penalties incurred under this
22 act in reasonable installment plans agreed to by both the
23 department and respective municipality. All moneys in this
24 account are hereby appropriated, with the authorization of the
25 Governor, for implementing the provisions of this subsection.

26 Section 11. Sections 14 and 16 of the act, amended or added
27 July 22, 1974 (P.L.621, No.208), are amended to read:

28 Section 14. Nuisances.--A violation of section 7 of this act
29 or the discharge of untreated or partially treated sewage to the
30 surface of the ground or into the waters of this Commonwealth,

1 except as specifically approved by the department under sections
2 202 and 207 of the act of June 22, 1937 (P.L.1987, No.394),
3 known as "The Clean Streams Law," or permitted by the local
4 agency pursuant to section 7.3 of this act shall constitute a
5 nuisance and shall be abatable in the manner provided by law.

6 Section 16. Hearings and Appeals.--(a) Any person aggrieved
7 by an action of a local agency or sewage enforcement officer in
8 granting or denying a permit, issuing an order or other actions
9 taken under this act shall have the right within thirty days
10 after receipt of notice of the action to request a hearing
11 before the local agency. Revocation of permits shall occur only
12 after notice and opportunity for hearing has been given to the
13 permittee. Hearings under this subsection [and any subsequent
14 appeal] shall be conducted pursuant to the act of December 2,
15 1968 (P.L.1133, No.353), known as the "Local Agency Law." Any
16 subsequent appeal shall be to the court of common pleas of the
17 county where the land to which the permit pertains is located.
18 The Attorney General shall be notified in writing by the
19 appellant of any appeal challenging the constitutionality of any
20 provision of this act or the validity of any rule or regulation
21 promulgated hereunder.

22 (b) Any order, permit, or decision of the department under
23 this act, except as otherwise provided by section 10 (10) and
24 section 11 of this act, shall be taken, subject to the right of
25 notice and appeal to the Environmental Hearing Board, pursuant
26 to section 1921-A of The Administrative Code of 1929, as
27 amended, and the act of June 4, 1945 (P.L.1388, No.442), known
28 as the "Administrative Agency Law," as amended.

29 Section 12. On the effective date of section 7.3 of the act
30 and the definition of "individual residential spray irrigation

1 system," permits shall be issued under this act. Before this
2 effective date, permits shall be issued under the act of June
3 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

4 Section 13. This act shall take effect as follows:

5 (1) The addition of section 7(a.1) of the act shall take
6 effect immediately.

7 (2) The addition of section 7.3 of the act and the
8 definition of "individual residential spray irrigation
9 system" in section 2 of the act shall take effect in 550
10 days.

11 (3) This section shall take effect immediately.

12 (4) The remainder of this act shall take effect in 365
13 days.